

IN THE COURT OF APPEALS OF IOWA

No 7-703 / 07-0096
Filed November 29, 2007

SARA E. KUHN,
Plaintiff-Appellant,

vs.

**PUBLIC EMPLOYMENT RELATIONS
BOARD and STATE OF IOWA
(COMMISSION ON VETERANS AFFAIRS),**
Defendants-Appellees

Appeal from the Iowa District Court for Polk County, Richard G Blane II,
Judge

The plaintiff appeals from the district court order on judicial review
affirming the finding there was just cause for her termination **AFFIRMED.**

Rustin T Davenport of De Vries, Price & Davenport, Mason City, for
appellant

Thomas J Miller, Attorney General and Robert Porter, Assistant Attorney
General, Des Moines, for appellee State of Iowa

Jan V Berry, Des Moines, for appellee Public Employment Relations
Board

Heard by Sackett, C J , and Vartheswaran and Baker, JJ

VAITHESWARAN, J.

Sara E. Kuhn was a nurse supervisor at the Iowa Veterans Home. An employee she supervised complained to Kuhn that another employee exposed his genitals to her. The Iowa Veterans Home subsequently terminated Kuhn's employment for failure to properly investigate this incident.

Kuhn filed administrative appeals of the discharge decision. In a final agency ruling, the Public Employment Relations Board concluded that her failure to initiate or conduct an investigation of the sexual harassment complaint amounted to just cause for the discharge. The district court affirmed the agency decision and Kuhn sought further judicial review.

Kuhn concedes the facts are essentially undisputed but she argues the agency's application of law to fact was erroneous. This argument implicates the judicial review standard of Iowa Code section 17A.19(10)(m). Under that standard, we are to reverse an agency decision if it is "[b]ased upon an irrational, illogical, or wholly unjustifiable application of law to fact that has clearly been vested by a provision of law in the discretion of the agency." See *Lakeside Casino and Zurich Am. Inc. Group v. Blue*, ___ N.W.2d ___, __ (Iowa 2007).

The Board's application of the just cause standard to the facts was clearly vested in the discretion of the agency. Under Iowa Code chapter 8A, governing the duties of the agency that houses the Public Employment Relations Board, the Board has authority to consider appeals of discharge decisions involving merit system employees. Iowa Code § 8A.415(2) (2005). Specifically, the Board is authorized to decide whether employment action was taken for "reasons not constituting just cause." *Id.* The agency is to adopt rules to administer this

portion of the statute *Id* § 8A 413(16)¹ The agency has done so, setting forth several grounds for disciplinary action, including “less than competent job performance,” “failure to perform assigned duties,” “inadequacy in the performance of assigned duties,” and the catch-all ground “or any other just cause” Iowa Admin Code r 11-60 2(8A) This rule essentially tracks the grounds set forth in the statute See Iowa Code § 8A 413(16)

Because chapter 8A clearly vests the agency’s application of law to fact on this issue within the discretion of the agency, we are obligated to give “appropriate deference” to the view of the agency on this matter Iowa Code § 17A 19(11)(c) This is important because there is no all-encompassing definition of “just cause” *Cf Briggs v Bd of Dirs*, 282 N W 2d 740, 743 (Iowa 1979) (examining just cause for termination of school administrator’s contract) As the board noted, application of the just cause standard is fact-specific

We turn to the Board’s application of that standard to the essentially undisputed facts of this case The board stated

We think it is clear that intentionally exposing one’s genitals to a co-worker in the workplace constitutes sexual harassment within the meaning of the State’s policy We also think the record makes it clear that Kuhn failed to initiate an investigation when she received reports that such serious misconduct had occurred, and also failed to take reasonable steps to call the matter to the attention of other management representatives, so that they could investigate without delay These failures, in our review, clearly amount to a failure to act on complaints of workplace harassment within the meaning of the sexual harassment provisions of the State’s EEO/AA/Anti-Discrimination policy, and constitutes just cause for discipline on a number of the grounds specified in IDOP rule 581-11 2

¹ We note that this provision refers to “good cause” for discharge rather than “just cause”

We defer to this application of law to fact. Additionally, we conclude the agency did not act irrationally, illogically, or wholly unjustifiably in determining that Kuhn's failure to immediately investigate the complaint amounted to just cause for the discharge.

AFFIRMED.